



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 17, 1997

Mr. David Méndez
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel
1700 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701-2443

OR97-2771

Dear Mr. Méndez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID# 110847.

The Austin Independent School District (the "district"), which you represent, has received a request for information concerning: (1) All memos, minutes, correspondence and documentation between AISD and IBM regarding HUB issues for the AISD Network Infrastructure Project and (2) all memos, minutes, correspondence and documentation between AISD and Starboard Technologies for the AISD Network Infrastructure Project. You explain that you will release some of the requested information. You claim, however, that the submitted proposals are excepted from required public disclosure by section 552.110 of the Government Code. We have considered the exception you claim and have reviewed the documents you have submitted.

First, we address the requestor's concern that the district had missed its ten-day deadline to request an open records ruling from this office pursuant to section 552.301(a) of the Government Code. Under section 552.301(a), if a governmental body fails to request a decision within that time, the information will be presumed to be public, and only the demonstration of a compelling interest can overcome that presumption. Open Records Decision No. 515 (1988) at 6. Without ruling on whether the district timely submitted a request to this office, we note that the presumption of openness may be overcome by a claim under section 552.110 because section 552.110 is designed to protect the interests of a third party. Open Records Decision No. 552 (1990); *see* Open Records Decision No. 150 (1977) (presumption of openness can be overcome by compelling demonstration that information

is deemed confidential by some other source of law or that third-party interests are at stake). The district has asserted a section 552.110 claim. Therefore, even if the district has submitted an untimely request, the presumption of openness has been overcome by its section 552.110 claim.

Pursuant to section 552.305 of the Government Code, this office informed IBM as well as Starboard Technology, whose information is also requested, of the request and of their obligation to submit to this office their arguments as to why any claimed exceptions to disclosure apply to their information. IBM replied, claiming that it did not seek exception from public disclosure a list of enumerated documents under section 552.110 of the Government Code but it did not expressly seek an exception to the remaining requested documents. Starboard Technology did not submit a response.¹

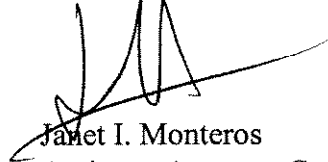
Section 552.110 excepts from disclosure trade secrets or commercial or financial information obtained from a person and confidential by statute or judicial decision. IBM did not submit a briefing argument that its information is protected under the second prong of section 552.110. In Open Records Decision No. 639 (1996), this office established that it would follow the federal courts' interpretation of exemption 4 to the federal Freedom of Information Act in applying the second prong of section 552.110. In *National Parks & Conservation Ass'n v. Morton*, the court concluded that for information to be excepted under exemption 4 to the Freedom of Information Act, disclosure of the requested information must be likely either to (1) impair the government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). Starboard did not respond to our notice by raising any exception to disclosure. Further, we do not believe that the district has established that these entities' information is protected under section 552.110. See Open Records Decision Nos. 639 (1996) at 4 (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 (1990) at 5 (party must establish prima facie case that information is trade secret), 542 (1990) at 3. The documents and the proposals submitted by IBM and Starboard Technology must therefore, be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

¹You submitted a "Log of Documents Submitted by AISD to the Attorney General" attached to the September 22, 1997 correspondence to this office. After reviewing the documents, we note that the August 6, 1997 correspondence includes a document entitled "SabreData, Inc. AISD-IBM Project Management Plan." We presume it is part of the Starboard Technology submission to the AISD as the document is not separately noted in your Log of Documents considered responsive to the request.

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/glg

Ref: ID# 110847

Enclosures: Submitted documents

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